IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.487 OF 1992

The Bank of Nova Scotia, a Canadian Banking Corporation having its head office at 44, Kings Street, West Toronto, Canada and its Office in India at 5, Mittal Tower, 'B' Wing, Nariman Point, Bombay - 400 021. .. Petitioner.

V/s.

1. Varinder Mehta, Assistant Commissioner of Income Tax, Circle-1(4), Bombay having his office at Aayakar Bhavan, Maharshi Karve Road, Bombay 400 020.

2. Union of India.

3. Victoria Finance Pvt. Ltd. formerly known as Cherag Investment & Trading Co. Pvt. Ltd. having its office at 11 Noble Chambers, 1st Floor, S.A. Brelvi Road, Fort, Bombay - 400 001 .. Respondents.

Mr.J.D. Mistry, Advocate with Mr.B.D. Damodar i/b. Kanga & Co.for the petitioner.

Dr.P. Daniel, Advocate with Mr.G. Hariharan for respondent Nos.1 and 2.

Ms.Deepti Mohan, Advocate i/b. Paras Kuhad & Associates for respondent No.3.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 29TH AUGUST, 2005.

ORAL JUDGMENT :(Per J.P. Devadhar, J.) :

1. The short point raised in this petition is, whether, by the impugned order dated December 24, 1991 the Assistant Commissioner of Income Tax, Circle 1(4) was justified in holding that the transfer of office premises bearing No.5 situated on the ground floor, Plot No.210, Block III, Nariman Point, Bombay 400 021 [hereinafter referred to as 'the said premises'] by the respondent No.3 in favour of the petitioner is void under Section 281 of the Income Tax Act, 1961 ?

2. The undisputed facts are that the petitioner, a canadian banking corporation carrying on business of banking was put in absolute and exclusive possession of the said premises by the respondent No.3 as per the terms more particularly set out in the agreement dated June 14, 1983. By another agreement dated September 9, 1983 the petitioner claims to have purchased the said premises from the respondent No.3. The petitioner has moved the appropriate authority by filing form No.37EE / form No.37 and on March 21, 1987 and no objection certificate was issued approving transfer of the said property by the third respondent in favour of the petitioner.

3. Thereafter, on April 27, 1988, the Assistant Commissioner of Income Tax issued a notice under Section 281(1) of the Income Tax Act, 1961 calling upon the respondent No.3 to show cause as to why the transfer of the said premises in favour of the petitioner should not be treated as invalid on the ground that the said property was sold during the pendency of the assessment proceedings. The petitioner was not a party to the said proceedings and without hearing the petitioner an order dated February 9, 1990 was passed by the Assistant Commissioner of Income Tax declaring that the transfer of the said property by the respondent No.3 in favour of the petitioner is void under Section 281 of the Income Tax Act. When the petitioner came to know about the said order, he filed a writ petition No.1085 of 1990 to challenge the said order and by an order dated December 9, 1990 this Court set aside the order dated February 9, 1990 and directed the Assistant Commissioner of Income Tax to pass a fresh order in accordance with law after hearing the petitioner. Thereupon, notice was issued to the petitioner and the petitioner in its reply objected to any order being passed under Section 281 of the Income Tax Act inter alia on the ground that the conditions set out in the section were not met with and that the petitioner is a bonafide purchaser of

the said premises. By the impugned order dated December 24, 1991 the Assistant Commissioner of Income Tax once again held that the transfer of the said premises in favour of the petitioner was void under Section 281 of the Income Tax Act. Hence, this petition.

4. Mr.Mistry, learned Advocate appearing on behalf of the petitioner relying upon the decision of the Apex Court in the case of TRO V/s. Gangadhar Vishwanath Ranade [234 ITR 188] submitted that under Section 281 of the Income Tax Act, the Assistant Commissioner of Income Tax has no power to declare transfer of property as void. He submitted that even assuming that such power existed, the facts of the case did not warrant an order under Section 281 of the Income Tax Act because the transaction entered into by and between the petitioner and the respondent No.3 is prior to date of filing of the return by the respondent No.3 for A.Y. 1984-85 and, therefore, it cannot be said that the assessment proceedings for assessment year 1984-85 were pending when the transfer took place. In any event, Mr.Mistry submitted that the petitioner was a bonafide purchaser and, therefore, the transfer of the said premises in favour of the petitioner is saved under Section 281 of the Income Tax Act.

5. Although, the petition was admitted in the year 1992, the respondents have not chosen to file affidavit-in-reply till date. However, Mr.Daniel, learned counsel for the revenue fairly stated that in the facts of the case it is not possible to support the order passed under Section 281 of the Income Tax Act. His only submission was that as held by the Apex Court in the case of Gangadhar V. Ranade (supra) quashing of the action taken under Section 281 of the Act should not affect the attachment if any levied by the department and the right of the Department to have the transfer declared as void by taking appropriate proceedings in accordance with law.

6. In this view of the matter, the impugned order dated December 24, 1991 passed under Section 281 of the Income Tax Act is quashed and set aside. However, it is made clear that quashing of the said order dated December 24, 1991 will not affect the attachment if any levied by the department in respect of the said premises and the right of the Department to have the transfer declared as void by taking appropriate proceedings in accordance with law.

7. Accordingly, rule is made absolute in terms of prayer (a) with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)